IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

WRIT PETITION LD.NO.2865 OF 2004

Asha Dahwani & Anr. ...Petitioners.
Vs.
Commissioner, BMC & Ors. ...Respondents.
....
Ms. Sumedha Rao for the Petitioners.
Ms.A. K. Savla for Respondent Nos.1 and 2.
Mr.Shailesh Shah for Respondent No.4.
.....

CORAM : DALVEER BHANDARI, C.J. &
DR.D.Y.CHANDRACHUD, J.

December 2, 2004.

P.C.:

The Petitioners are ground floor residents of a building, situated at Plot No.445, 14th Road, T. P. S. III, Bandra (West), Mumbai. In these proceedings, they seek the issuance of a writ of Mandamus, directing the Municipal Corporation to set aside the plans sanctioned on 5th April 2004 for carrying out certain additional construction.

An affidavit in reply has been filed in these proceedings by the Fourth Respondent.

We are of the view that there has been a willful

suppression of the material facts on the part of the Petitioners and that this petition is liable to be dismissed on this ground. In the affidavit in reply that has been filed by the Fourth Respondent, it has been stated that the Third Respondent which is a Co-operative Housing Society comprising of flat owners, passed a resolution dated 22nd May 2001, by which all the members including the Petitioners unanimously approved the engagement of the services of the Fourth Respondent for the development of the property by constructing additional floors on the existing building by utilizing the available Floor Space Index (FSI) and/or Transferable Development rights (TDR). The resolution, it has been stated, provided that the members of the Society on the ground floor would be shifted to and allotted flats of the same carpet area on the additional floors of the building that were proposed. On 8th June 2001, the Co-operative Society issued a letter of acceptance to the Fourth Respondent which was signed by all the members including the Petitioners. A Development Agreement has been entered into between the Society and the Fourth Respondent which was signed by 10 out of 12 flat owners, including the Secretary and the Chairman. At that stage, the petitioners declined to sign the Development Agreement. The Bombay Municipal Corporation

issued an IOD on 6th March 2003, followed by a Commencement Certificate of 4th April 2003. Subsequently, since the Petitioners were not agreeable to the proposed shifting, a Special General Body Resolution was passed on 22nd June 2003 that the Petitioners would not be shifted from their ground floor flats if they so desire. A supplemental Agreement dated 26th April 2004 is stated to have since been executed by the Society with the Fourth Respondent recording that Flat Nos.1 and 2 on the ground floor belonging to the Petitioners would not be demolished.

The Petitioners have suppressed from the Court, the material facts that they had consented to the proposal in the Special General Body Meeting of the Co-operative Society held on 22nd May 2001 and that they had signed the letter of acceptance dated 8th June 2001 (Exh.B to the reply of the Fourth Respondent). We specifically enquired of the Learned Counsel appearing on behalf of the Petitioners as to whether the Petitioners have signed the letter of acceptance dated 8th June 2001, since a copy thereof which is annexed to the affidavit in reply of the Fourth Respondent bears signatures of both the Petitioners. Learned Counsel for the Petitioners has not denied the aforesaid fact. In our view, these

material facts ought to have been disclosed before the Court. We decline to exercise our jurisdiction under Article 226 of the Constitution in aid of Petitioners whose conduct in relation to these proceedings before the Court is anything but fair and proper. The jurisdiction under Article 226 of the Constitution cannot be exercised at the behest of a party which has not made a full and fair disclosure of fact or which is guilty of a material suppression of relevant facts. While dismissing the petition, we, however, wish to clarify that we have declined to exercise our jurisdiction under Article 226 of the Constitution only on the aforesaid ground. This order shall not come in the way of the Planning Authority – the Municipal Corporation – from independently determining the lawfulness of the proposed construction. Subject to the aforesaid, the Petition shall stand dismissed.

CHIEF JUSTICE

DR.D.Y.CHANDRACHUD, J.